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Ditthavong & Steiner, P.C.
44 Canal Center Plaza
Suite 322
Alexandria, VA 22314

EXAMINER	
RUIZ, ANGELICA	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETROS BELIMPASAKIS

Appeal 2016-008722
Application 13/025,121[1]
Technology Center 2100

Before JEAN R. HOMERE, BRADLEY W. BAUMEISTER, and JEREMY J. CURCURI, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* HOMERE.

Opinion Concurring-In-Part filed by *Administrative Patent Judge* BAUMEISTER.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] Appellant identifies the real party in interest as Nokia Corporation. App. Br. 1.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–20, and 49. App. Br. 4. Claims 21–48 have been canceled. Claims App'x. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's Invention

Appellant invented a method and system for providing location based information to the user of a mobile device (101). Spec. ¶ 27, Fig. 1. In particular, upon detecting the location of the mobile device (101), the detected location is augmented with associated web content and real world view (e.g. augmented reality (AR)), thereby facilitating presenting on the user device (101) multiple layers of the location information. *Id.* ¶¶ 27–30.

Illustrative Claim

Independent claim 1 is illustrative, and reads as follows:

> 1. A method comprising facilitating a processing of and/or processing, by a processor, (1) data and/or (2) information and/or (3) at least one signal, the (1) data and/or (2) information and/or (3) at least one signal based, at least in part, on the following:
>
> at least one association of location information with web content; and at least one presentation of the web content and the associated location information over a presentation of a real-world view of a location according to a predetermined format,
>
> wherein the location information is associated with augmented reality information and the predetermined format facilitates, at least in part, discovery of multiple layers of the location information.

Prior Art Relied Upon

Hamynen	US 20100161658 A1	June 24, 2010
Poirier	US 2011/0314049 A1	Dec. 22, 2011

Rejection on Appeal

Claims 1–20 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hamynen and Poirier. Final Act. 5–10.

ANALYSIS

We consider Appellant's arguments *seriatim* as they are presented in the Appeal Brief, pages 11–16, and the Reply Brief, pages 2–7.[2] We have reviewed the Examiner's rejection in light of Appellant's arguments. We are unpersuaded by Appellant's contentions. Except as otherwise indicated hereinbelow, we adopt as our own the findings and reasons set forth in the Examiner's Answer in response to Appellant's Appeal Brief. Ans. 2–5, Final Act. 5–10. However, we highlight and address specific arguments and findings for emphasis as follows.

Regarding the rejection of claim 1, Appellant argues that the combination of Hamynen and Poirier does not teach or suggest location information associated with augmented reality and such that the

[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed December 10, 2015), the Reply Brief (filed September 21, 2016), and the Answer (mailed July 21, 2016) for their respective details. We have considered in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments Appellant could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013).

presentation of the real world view of the location according to a predetermined format facilitates the discovery of multiple layers of the location information. App. Br. 5–6. According to Appellant, although Poirier discloses augmenting a captured image location with a plurality of layers (background/foreground), those layers are not layers of the image location. *Id.* at 6–8 (citing Poirier ¶¶ 69, 76, 77). Rather, the foreground and background layers are merely overlaid on the image location, as opposed to being a part thereof. *Id.* at 7. Appellant further asserts that "*Poirier* relates to . . . geo-tagging of an image . . ." whereas '"location information' must be 'associated with augmented reality information' and not simply the image," as required by the claim. "At best, *Poirier* describes 'multiple layers of images' and not 'multiple layers of location information' which would then require different location information for each layer." *Id.* 7–8. These arguments are not persuasive.

We note at the outset that the claim does not require a plurality of layers, each containing different location information. Instead, the disputed claim limitation merely requires that the *location information be associated with augmented reality information* and a predetermined format that facilitates *the discovery of multiple layers of the location information.*

Poirier discloses, upon a user capturing an image of a landmark (e.g. Eiffel tower), the signature and metadata associated with the captured image are used to track GPS information associated therewith, as well as to identify similar pictures in a database. Poirier ¶¶ 69, 72–74. The user can combine the captured picture of the landmark with scenes (foreground, background) extracted from the retrieved pictures thereby augmenting the captured location information with associated augmented reality views. *Id.*

¶¶ 75–77. Alternatively, the captured image can be depicted on a map. *Id.* ¶ 72.

We agree with the Examiner that Poirier's disclosure of a captured image of the Eiffel tower augmented with foreground/background scenes from similar pictures teaches location information augmented with the real world view of the location such that the resulting composite image includes a plurality of layers. Ans. 2–3. We are not persuaded by the distinction that Appellant seeks to delineate between layers of the image and layers of the location information. That is, because location information is taught by a captured image (e.g., the Eiffel tower), any layer of that image is also a layer of the location information.

Second, Appellant argues that Hamynen is not analogous art, and there is insufficient motivation for its combination with Poirier. App. Br. 8. These arguments are not persuasive. We agree with the Examiner that Hamynen is analogous art because it relates to the same field of endeavor as Appellant's invention (geo locating objects/places captured by a mobile device). Ans. 4. We further agree with the Examiner that because Poirier and Hamynen disclose known elements that perform their ordinary functions to predictably result in a system that augments a geo-located image of an object a real world image, the combination is proper. *Id.* at 4–5.

For these reasons, we are not persuaded of error in the Examiner's rejection of claim 1 as being unpatentable over the combination of Poirier and Hamynen. Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1, as well as the rejection of independent claim 11, which Appellant argues is patentable for similar reasons. App. Br. 9. Because Appellant does not make separate arguments for the

patentability of dependent claims 2–20 and 49, we sustain the 35 U.S.C. § 103(a) rejection of those claims as well. *See id.*; 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

For the above reasons, we affirm the Examiner's rejection of claims 1–20, and 49.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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BAUMEISTER, *Administrative Patent Judge*, Concurring-In-Part.

I agree with the Majority's findings and conclusions to the extent that they apply to apparatus claims 11–20. I cannot agree, though, that the rejection is reasonable with respect to method claims 1–10 and 49.

Independent method claim 1 arguably sets forth no affirmative method steps. As such, any review of independent claim 1 would require undue speculation as to the intended metes and bounds of claim protection being sought. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (holding that the Examiner and the Board were wrong in relying on what, at best, were speculative assumptions as to the meaning of the claims and in basing a rejection under 35 U.S.C. § 103 thereon). None of claims 2–10 or 49 cures this unreasonable ambiguity that exists in relation to claim 1.

Even under the most generous interpretation, the reasonableness of which need not be reached, the claim only could be interpreted as setting forth a single affirmative step: facilitating processing of a processor, a signal, or of information. The gerund "facilitating," however, is merely a generic term that describes no specific act. It merely serves as a nonce word tantamount to being synonymous with "step for." *Cf. Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350–51 (Fed. Cir. 2015) ("Generic terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be used in a claim in a manner that is tantamount to using the word 'means' . . . ."). Restated, even if claim 1 were to be interpreted as setting forth an affirmative method step, a question still would exist as to whether claim 1 constitutes an improper single-means claim. *See In re Hyatt,* 708 F.2d 712, 714–15 (Fed Circ. 1983).

Accordingly, I would reverse the rejection of claims 1–10 and 49.